



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

JRE

Docket No: 8230-98

16 May 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 27 April 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, it considered the comments of your counsel.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board noted that a service member is ineligible for disability evaluation when he is pending separation under provisions which authorize a discharge under other than honorable conditions. You were not eligible for disability processing in 1998 because you requested discharge in lieu of trial by court-martial for the offenses of communicating a threat to kill, and disobedience of the order of, and disrespect to, a superior noncommissioned officer. In deciding to characterize your service as under other than honorable conditions, the discharge authority considered the severity of your offenses, and your two prior nonjudicial punishments for disobedience of lawful orders, disrespect to superiors, altering an identification card, wrongful destruction of property, house breaking and larceny.

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Although you suffered from a mental disorder during your enlistment, you have not demonstrated that you lacked mental responsibility when you committed the misconduct which resulted in your discharge, that the misconduct was caused by the mental disorder, or that clemency is warranted because of the disorder. A factor militating against a

recommendation for clemency is that the available records indicate that you abused alcohol, as well as drugs such as methamphetamine and "mushrooms", prior to enlisting, and that you fraudulently procured your enlistment by concealing that history of abuse. Your record also indicates that there was an apparent relationship between the mental disorder and your alcohol abuse.

The Board cannot determine why your case was not reviewed by the Physical Evaluation Board (PEB) in 1997, as recommended by a medical board. It noted, however, that your disorder is not unfitting per se, and that you were able to return to duty after the medical board evaluation concluded. The possibility that you would have been separated by reason of physical disability in 1997 had your case been reviewed by the PEB at that time was considered insufficient to excuse your subsequent misconduct, or warrant any corrective action.

In the absence of evidence which demonstrates that your discharge under other than honorable conditions was erroneous or unjust, the Board was unable to recommend any corrective action in your case. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director